

1 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@DanningGill.com
2 AARON E. DE LEEST (State Bar No. 216832)
adeleest@DanningGill.com
3 DANNING, GILL, ISRAEL & KRASNOFF, LLP
1901 Avenue of the Stars, Suite 450
4 Los Angeles, California 90067-6006
Telephone: (310) 277-0077
5 Facsimile: (310) 277-5735

6 Proposed Attorneys for Better Nutritionals, LLC,
Debtor and Debtor in Possession

7

8 **UNITED STATES BANKRUPTCY COURT**

9

CENTRAL DISTRICT OF CALIFORNIA

10

RIVERSIDE DIVISION

11

12 In re

Case No. 6:22-bk-14723-RB

13 BETTER NUTRITIONALS, LLC,

Chapter 11

14

Debtor and Debtor in
Possession.

**NOTICE OF MOTION AND MOTION
FOR ENTRY OF ORDER
(1) AUTHORIZING USE OF CASH
COLLATERAL ON AN INTERIM BASIS
PENDING A FINAL HEARING,
(2) SCHEDULING A FINAL HEARING
ON THE DEBTOR'S REQUEST FOR
AUTHORITY TO USE CASH
COLLATERAL THROUGH MARCH 31,
2023, AND (3) GRANTING RELATED
RELIEF; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

15

16

17

18

19

20

21

Date: [See notice of hearing]
Time: [See notice of hearing]
Place: [See notice of hearing]

22

23

24

25

26

27

28

1 **PLEASE TAKE NOTICE** that at a date, time and place to be set by the United States
2 Bankruptcy Court for the Central District of California, Riverside Division,¹ Better Nutritionals,
3 LLC, a California limited liability company (the “**Debtor**”), will and does hereby move on an
4 expedited basis, authorized by Local Bankruptcy Rule 2081-1, for an order (1) authorizing the
5 Debtor to use cash collateral on an interim basis pending a final hearing, (2) scheduling a hearing
6 to consider the Debtor’s request for authority to use cash collateral through March 31, 2023, and
7 (3) granting related relief. The Debtor’s proposed order granting this motion is attached as Exhibit
8 “A” hereto.

9 This motion is based on the following grounds: The Debtor is a state-of-the-art contract
10 manufacturer and R&D leader in nutritional supplements. On December 20, 2022 (the “**Petition**
11 **Date**”), the Debtor filed a petition for relief under chapter 11 of title 11 of the United States Code.

12 In the ordinary course of its business, the Debtor uses cash on hand and the proceeds of
13 sales of inventory to operate its business and pay its employees. The Debtor needs to continue to
14 use cash on hand, and monies generated from receivables and inventory, to preserve its assets and
15 ongoing business operations.

16 The Debtor believes that there are three parties that have or may have security interests in
17 “cash collateral” (as that term is defined in the Code): Aramark Services, Inc. (“**Aramark**”);
18 Suitable Staffing Solutions (“**Suitable Staffing**”); and insiders Sharon and Odelya Hoffman (the
19 “**Hoffmans**”) (collectively the “**Secured Parties**”). Pursuant to a settlement agreement entered
20 into within 90 days before the Petition Date, Aramark has a security interest in substantially all of
21 the Debtor’s assets. Pursuant to a judgment lien filed by Suitable Staffing within 90 days before
22 the Petition Date, Suitable Staffing has a security interest in assets described in California Code of
23 Civil Procedure § 697.530 (including accounts receivable and inventory). Finally, shortly before
24 the Petition Date, the Hoffmans loaned the Debtor money needed to commence this case, and as
25

26 ¹ The date, time, and method of appearing at the hearing are identified in a notice of hearing
27 filed and served concurrently herewith. Due to Covid-related protocols, in-person appearances
28 may not be permitted. Please see the Court’s website, www.cacb.uscourts.gov, for the presiding
judge’s procedures for appearing at the hearing.

1 part of the loan transaction received a security interest in substantially all of the Debtor's assets.
2 The aggregate amount owed to the Secured Parties is approximately \$4.3 million, which is far less
3 than the value of the assets in which the Secured Parties have interests.

4 Exhibit "1" to the Declaration of Sharon Hoffman is an interim weekly projection of
5 revenues and expenses through March 2023. The Debtor proposes to use cash collateral as set
6 forth in that exhibit, with up to a 10% cumulative variance, through March 2023.

7 Although the Debtor believes that the Secured Parties are adequately protected by their
8 interests in non-“cash collateral” assets, the Debtor is proposing to grant the Secured Parties a
9 replacement lien on all of the estate's assets, excluding avoiding power claims and recoveries, to
10 the extent that the Debtor's use of cash collateral results in a decrease in the value of such party's
11 interest in cash collateral. The Debtor believes that the replacement lien, especially together with
12 the existing liens and the Debtor's continued operation of its business, will adequately protect the
13 Secured Parties from any possible diminution in value of the cash collateral in which they have or
14 may have an interest.

15 The Debtor is requesting that the Court enter an order substantially in the form of the order
16 attached as Exhibit "A" hereto, authorizing the Debtor to use cash collateral on an interim basis
17 pending a hearing on the Debtor's request for authority to use cash collateral on a final basis. At
18 the final hearing, the Debtor will request authority to use cash collateral through March 2023. The
19 Debtor is requesting that the hearing on final approval be set during the week of January 23, 2022,
20 with any opposition to the Debtor's request to be filed no later than 14 calendar days before the
21 hearing.

22 This motion is based upon this notice and motion, the Memorandum of Points and
23 Authorities appended hereto, the separate Declaration of Sharon Hoffman and exhibits thereto, the
24 separate notice of the hearing on this and other first day motions, the *Statement Regarding Cash*
25 *Collateral or Debtor in Possession Financing* filed pursuant to Local Bankruptcy Rule 4001-2(a),
26 and such other evidence as may be presented to the Court.

27 **PLEASE TAKE FURTHER NOTICE** that this motion is being presented to the Court
28 pursuant to the procedures set forth in Local Bankruptcy Rules 2081-1 and 9075-1, and notice of

1 the motion and hearing is being given in accordance with instructions given by the Court pursuant
2 to Local Bankruptcy Rule 9075-1(a)(2)-(3). Please see the separate notice of hearing regarding the
3 deadline (if any) for filing any opposition or other response to this motion. If you do not have any
4 objection to this motion, you need not take any further action.

5

6 DATED: December 20, 2022

DANNING, GILL, ISRAEL & KRASNOFF, LLP

7

8

By: /s/ Aaron E. de Leest

AARON E. DE LEEST

Proposed Attorneys for Better Nutritionals, LLC.
Debtor and Debtor in Possession

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

BACKGROUND FACTS

A. **BANKRUPTCY BACKGROUND**

6 On December 20, 2022 (the “**Petition Date**”), Better Nutritionals, LLC (the “**Debtor**”),
7 filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the
8 “**Code**”). The Debtor remains in possession of its property and continues to operate its business as
9 a debtor in possession pursuant to sections 1107(a) and 1108 of the Code. The Debtor has filed a
10 number of motions seeking typical “first day” orders.

B. THE DEBTOR'S HISTORY AND BUSINESS OPERATIONS

13 The Debtor is a state-of-the-art contract manufacturer and R&D leader in nutritional
14 supplements. The Debtor specializes in making cutting-edge formulations of gummy supplements
15 focused on personal health and wellness. The Debtor's output capacity currently is about nine
16 billion gummies per year. It is an FDA-registered manufacturer, and meets stringent standards to
17 label its products as vegan, Kosher-certified, and free of top-8 allergens and gluten.

18 The Debtor's headquarters is located at 3390 Horseless Carriage Drive, Norco, California.
19 Its four-building campus in Norco contains approximately 422,000 square feet of manufacturing,
20 warehouse, R&D and office space. The Debtor also manufactures products in an 18,000 square
21 foot facility in Gardena, where it was headquartered until 2021.

22 The Debtor grew significantly from 2019 through 2021. Sales revenues increased from
23 \$21.8 million in 2019 to \$222.8 million in 2021. However, for the twelve months that ended on
24 September 30, 2022, revenues were down and expenses were up, leading to a net loss during that
25 12-month period of about \$45 million.

26 The dramatic decrease in revenues and increase in expenses was the result of a series of
27 wrongful acts by a Canadian entity, 12416913 Canada, Inc. (“**12416913 Canada**”), and certain
28 persons and entities affiliated with that entity. 12416913 Canada is affiliated with the owners of

1 Goli Nutrition, Inc., a Delaware corporation (“**Goli Delaware**”), which is a subsidiary of Goli
2 Nutrition, Inc., a Canadian corporation (“**Goli Canada**”). 12416916 Canada, Goli Delaware, and
3 Goli Canada are hereinafter referred to herein as “**Goli**.”

4 As discussed in the accompanying Declaration of Sharon Hoffman and the Debtor’s
5 recently-filed complaint attached as Exhibit “3” thereto, the Debtor aggressively embarked on an
6 expansion of its operations, and incurred substantial debt to trade creditors, building contractors,
7 vendors, and other parties, in reliance on Goli’s express representations and promises that it would
8 significantly increase the amount of its purchases from the Debtor if the Debtor took the significant
9 steps needed to supply that capacity. However, at some point in 2021, while representing that it
10 needed more products – causing the Debtor to make the products to satisfy Goli’s requests – Goli
11 took delivery of and paid for only a fraction of what the Debtor made. Goli also refused to allow
12 the Debtor to release the products Goli ordered so the Debtor could sell the products to others. The
13 Debtor now understands that Goli was attempting to induce a private equity firm to invest in Goli,
14 and used the inflated purchase orders as part of its efforts to obtain money from investors, but did
15 not intend to honor its commitment to the Debtor.

16 The Debtor has attempted to adjust its business model by, among other things, developing
17 relationships with new clients. In mid-2021, over 90% of the Debtor’s monthly sales volume was
18 to Goli. That percentage has declined to 50% to 75%, and the Debtor is developing relationships
19 with new customers, including some Fortune 100 customers.

20 Unfortunately, the increase in revenues from non-Goli customers has not been adequate to
21 dig the Debtor out of the deep hole caused by Goli. The Debtor’s accounts payable exceed \$55
22 million. Creditors include suppliers of goods, ingredients, equipment, employees and services used
23 by the Debtor in the ordinary course of its business. Creditors also include contractors who worked
24 on expansions to the Norco facility, and suppliers of equipment and materials used in connection
25 with that construction.

26 ///

27 ///

28 ///

1 **C. THE DEBTOR'S PLAN FOR THIS CASE**

2 The Debtor is continuing to formulate a long-term plan for its operations. The Debtor's
3 founders believe that the Debtor has great potential, and can position itself well in a global gummy
4 market that is expected to grow significantly over at least the next six years. It is already pivoting
5 toward doing more business with non-Goli customers and being less dependent on revenues from
6 customers that refuse to honor their commitments. The Debtor's long-term plan will be influenced
7 by, among other things, the Debtor's ability to generate revenues during the case, cuts in expenses,
8 the willingness of suppliers to continue to do business with the Debtor, the potential for short-term
9 and/or long-term financing, offers (if any) it may receive from potential purchasers, and recoveries
10 from Goli and others whose fraudulent actions have caused damage to the Debtor and its creditors.

11 In the short term, the Debtor needs the respite afforded by the automatic stay to preserve its
12 assets from potential creditor suits and judgment enforcement actions. To the best of the Debtor's
13 knowledge, there are currently 28 lawsuits pending against the Debtor. Two additional plaintiffs
14 have reduced their claims to judgment, and those judgments have not yet been satisfied. Facing
15 the prospect that judgment creditors will commence enforcement proceedings, and plaintiffs will
16 seek pre-judgment right-to-attach orders and writs of attachment, the Debtor filed for bankruptcy
17 to preserve its assets, continue operating, and develop a plan to restructure its operations and debt.

18
19 **II.**

20 **ADDITIONAL FACTS SPECIFIC TO THE RELIEF REQUESTED**

21 **A. THE DEBTOR'S ASSETS**

22 According to the Debtor's balance sheet as of September 30, 2022, the Debtor had over
23 \$118 million of assets. This included (at the time) approximately \$32.5 million of inventory, and
24 \$79.5 million of fixed assets. The Debtor believes that the fair market value of its accounts
25 receivable, inventory and other assets is well more than \$10 million.

26 ///

27 ///

28 ///

1 **B. THE DEBTOR'S SECURED CREDITORS**

2 The Debtor believes that it has three secured creditors. The liens in favor of the first two
3 creditors are subject to avoidance as preferences, unless those creditors are fully secured. The third
4 lien is in favor of the Debtor's principals, who consent to the use of cash collateral on the terms set
5 forth herein.

6

7 **1. Aramark Services, Inc. ("Aramark")**

8 Pursuant to a March 2021 contract, Aramark provided certain food services to the Debtor.
9 Aramark operated the Debtor's cafeteria, where meals were offered, free of charge, to the Debtor's
10 employees.

11 On October 10, 2022 (70 days before the Petition Date), the Debtor entered into a
12 settlement agreement with Aramark. The Debtor agreed to pay Aramark approximately \$1.47
13 million for services it previously rendered and for which it had not been paid. In the settlement
14 agreement, the Debtor granted Aramark a security interest in substantially all of its assets.

15 On October 11, 2022, Aramark filed a UCC-1 financing statement with the California
16 Secretary of State. Aramark identified its collateral as "All assets of the Debtors [sic] now owned
17 or hereafter acquired."

18 The Debtor believes that, by virtue of the settlement agreement and financing statement,
19 Aramark holds a perfected first-priority security interest in substantially all of the Debtor's assets.
20 The Debtor believes that the value of such assets far exceeds the amount owed to Aramark.

21

22 **2. Suitable Staffing Solutions ("Suitable Staffing")**

23 In June 2022, Suitable Staffing filed a complaint against the Debtor in L.A. Superior Court.
24 The Debtor entered into a settlement with Suitable Staffing, but was unable to perform. Therefore,
25 on October 5, 2022, a stipulated judgment was entered for about \$2.23 million.

26 Suitable Staffing filed a Notice of Judgment Lien (JL-1) on November 1, 2022. Pursuant to
27 California Code of Civil Procedure § 697.530, Suitable Staffing has a lien on the following types of
28 personal property assets:

- 1 • Accounts receivable;
- 2 • Tangible chattel paper, as defined in § 9102(a)(79) of the Commercial Code;
- 3 • Equipment located in the state of California;
- 4 • Farm products located in the state of California;
- 5 • Inventory located in the state of California; and
- 6 • Negotiable documents of title located in the state of California.

7 With respect to these types of assets, the Debtor believes that Suitable Staffing holds a second-
8 priority security interest. The Debtor believes that the value of such assets far exceeds the amount
9 owed to Aramark and Suitable Staffing.

10

11 **3. Sharon and Odelya Hoffman (the “Hoffmans”)**

12 In the days leading up to the Petition Date, the Debtor needed funds to pay professionals
13 prior to filing its chapter 11 petition. Efforts to generate a few million dollars of revenue by selling
14 excess inventory prior to the Petition Date were unsuccessful, and the Debtor did not receive other
15 revenues sufficient to pay professionals from existing cash on hand. As a result, using funds they
16 borrowed from friends and family, the Debtor’s principals loaned the Debtor \$600,000, evidenced
17 by a promissory note and a security agreement. The note calls for interest-only payments at a rate
18 of 9% per annum (prime plus two percent) for the first year, and payments of principal and interest
19 over the next nine years. As was Aramark in its settlement agreement, the Hoffmans were granted
20 a security interest in substantially all of the Debtor’s assets. On December 18, 2022, the Hoffmans
21 filed an “all assets” UCC-1 financing statement with the California Secretary of State.

22 The Debtor believes that the Hoffmans hold a perfected third-priority security interest in the
23 assets covered by Suitable Staffing’s lien, and a second-priority security interest in substantially all
24 of the Debtor’s other assets. The Debtor believes that the value of such assets far exceeds the
25 amount owed to Aramark, Suitable Staffing and the Hoffmans. In any event, the Hoffmans have
26 consented to the Debtor’s use of cash collateral on the terms set forth herein.

27 ///

28 ///

1 **C. UCC-1 FINANCING STATEMENTS FILED BY ATOS IT SOLUTIONS AND**
2 **SERVICES, INC. (“Atos”) AND GOLI NUTRITION, INC.**

3 In 2020, the Debtor entered into several contracts with Atos. The overall relationship is
4 governed by a Master Services Agreement dated January 22, 2020 (the “MSA”), between Goli
5 Delaware (defined in the MSA as “Customer”), the Debtor (defined in the MSA as “Guarantor”),
6 and Atos (defined in the MSA as “Supplier”). Under the MSA, Atos was to provide support,
7 consulting, design, acquisition, project management, implementation and/or related information
8 technology services, with the specifics to be set forth in separate statements of work (“SOWs”).
9 Goli, the Debtor and Atos entered into multiple SOWs during 2020, including two under which
10 Atos supplied multiple new manufacturing lines at the Debtor’s Norco facility.

11 In January 2021, Atos filed a financing statement describing its collateral as any and all
12 accounts receivable of the Debtor. In July 2021, Atos filed a financing statement describing its
13 collateral as equipment sold, financed or leased by Atos to the Debtor. Thus, at best, Atos has a
14 security interest in the Debtor’s current accounts receivable and the particular equipment sold,
15 financed or leased by Atos.

16 As discussed in the accompanying declaration of Sharon Hoffman, the Debtor does not
17 believe that it currently owes anything to Atos. In February 2022, Atos asserted that it was owed
18 \$25 million. In March 2022, Atos asserted that it was owed about \$26 million. In May 2022, Atos
19 said that it was owed about \$26 million. But in June or July 2022, Atos entered into a settlement
20 with Goli pursuant to which Goli appears to have paid Atos \$32 million, satisfying amounts owed
21 to Atos under the MSA and related SoWs. The Debtor understands that Goli asserts an ownership
22 interest in the equipment covered by Atos’ July 2021 financing statement, as evidenced by a UCC-
23 1 filed by Goli in August 2022.²

24 ///
25 ///

26

27 ² Although Goli filed a financing statement, the description of the “collateral” reflects that Goli
28 was simply giving notice of its alleged ownership interest and that the Debtor is allegedly “a bailee
with respect to such assets.”

1 **D. THE DEBTOR'S PROPOSED USE OF CASH COLLATERAL**

2 Generally, the Code defines “cash collateral” to refer to cash, negotiable instruments,
3 documents of title, securities, deposit accounts or other cash equivalents in which the estate has an
4 interest. The Debtor desires to use cash collateral, and in particular cash on hand and the proceeds
5 of accounts receivable and inventory, in the ordinary course of business to operate its business and
6 pay operating expenses.

7 Exhibit “1” to the Declaration of Sharon Hoffman is an interim weekly projection of
8 revenues and expenses through March 2023. The Debtor proposes to use cash collateral as set
9 forth in that exhibit, with up to a 10% cumulative variance, through March 2023.

10 The Debtor believes that Aramark, Suitable Staffing and the Hoffmans (collectively the
11 **“Secured Parties”**) are more than adequately protected by their existing security interests in non-
12 cash collateral assets of the Debtor. Nevertheless, the Debtor proposes that each party claiming an
13 interest in cash collateral be granted a replacement lien on all of the estate’s assets, excluding
14 avoiding power claims and recoveries, to the extent that the Debtor’s use of cash collateral results
15 in a decrease in the value of such party’s interest in cash collateral.

16 The use of the cash collateral is necessary for the Debtor’s continued business operations
17 and is in the best interests of the estate and the creditors. The proposed use of the cash collateral is
18 no different than the prior prepetition use of the cash collateral. The Debtor has an ongoing need to
19 generate funds to pay necessary operating expenses, and a concomitant need to use cash collateral
20 for operations, to preserve and maintain the business pending the confirmation of a plan for the
21 benefit of the estate and its creditors. Operating the Debtor’s business will not only maximize the
22 values of the business and the parties’ collateral, but also preserve and maintain the business as a
23 going concern.

24 ///

25 ///

26 ///

27 ///

28 ///

III.

DISCUSSION

A. THE DEBTOR SHOULD BE AUTHORIZED TO USE CASH COLLATERAL

4 The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy
5 Code. *See* 11 U.S.C. §§ 363(c)(1), 1107(a), 1108. "Cash collateral" consists of "cash, negotiable
6 instruments, documents of title, securities, deposit accounts or other cash equivalents in which the
7 estate and an entity other than the estate have an interest." 11 U.S.C. § 363(a). It also consists of
8 "the proceeds, products, offspring, rents, or profits of property . . . subject to a security interest as
9 provided in section 552(b) of [the Bankruptcy Code]." *Id.* Section 363(c)(2) provides that with
10 respect to cash collateral, a trustee or debtor in possession may use cash collateral if the non-debtor
11 with an interest in the cash collateral consents, or "the court, after notice and a hearing, authorizes
12 such use . . . in accordance with the provisions of this section." 11 U.S.C. §363(c)(2).

13 Except as to the Hoffmans, the Debtor does not know whether the Secured Parties consent
14 to the Debtor's use of their cash collateral. Therefore, for purposes of this motion, the Debtor will
15 proceed as if the Secured Parties have not expressly authorized the use of their cash collateral and
16 are requesting adequate protection pursuant to section 363(e) of the Bankruptcy Code.

17 Section 361 of the Bankruptcy Code describes “adequate protection” as follows:

18 When adequate protection is required under section 362, 363,
19 or 364 of this title of an interest of an entity in property, such adequate
 protection may be provided by —

22 (2) providing to such entity an additional or replacement lien
23 to the extent that such stay, use, sale, lease, or grant results in a
decrease in the value of such entity's interest in such property; or

27 The use of cash collateral involves balancing the interests of the debtor and secured creditor, and
28 the equities must therefore be balanced in each case. *In re Stein*, 19 B.R. 458, 459-60 (Bankr. E.D.

1 Pa. 1982). It is recognized that “the purpose of Chapter 11 is to rehabilitate debtors and generally,
2 access to cash collateral is necessary to operate a business.” *In re Dynaco Corporation*, 162 B.R.
3 389, 394 (Bankr. D.N.H. 1993) (quoting *Stein*, 19 B.R. at 459). To encourage reorganization, a
4 flexible approach should be used in the application of adequate protection. *In re McCombs Props.*
5 *VI, Ltd.*, 88 B.R. 261, 267 (Bankr. C.D. Cal. 1988) (citing *In re Martin*, 761 F.2d 472 (8th Cir.
6 1985)). A debtor’s use of cash collateral during case administration must be considered in light of
7 the quest for a successful reorganization. *In re O’Connor*, 808 F.2d 1393, 1397 (10th Cir. 1987).
8 Adequate protection is not intended to nor need it stand as an absolute guarantee to the secured
9 creditor that it will receive the value of its interest in the cash collateral. *McCombs*, 88 B.R. at 267;
10 *In re Elliott Lease Cars, Inc.*, 20 B.R. 893, 896 (Bankr. D.R.I. 1982).

11 The use of cash collateral for the preservation of the value of a secured creditor’s lien is
12 sufficient to provide adequate protection to a secured creditor for use of those funds. *Fed. Nat’l.
13 Mortgage v. Dacon Bollingbrook Assocs. Ltd. P’ship.*, 153 B.R. 204, 214 (N.D. Ill. 1993); *In re
14 Triplett*, 87 B.R. 25, 27 (Bankr. W.D. Tex. 1988); *Stein*, 19 B.R. at 460; *In re Oak Glen R-Vee*, 8
15 B.R. 213, 216 (Bankr. C.D. Cal. 1981). In this case, one of the uses of cash collateral will be to
16 maintain the Debtor’s ongoing business.

17 It is also necessary and appropriate that the Debtor be authorized to use cash collateral to fund
18 the payment of other expenses that it incurs. So long as a secured creditor is adequately protected,
19 cash collateral may be used by a debtor for the general benefit of the estate and need not be devoted
20 exclusively to the protection of the creditor or the collateral. *In re Triplett*, 87 B.R. 25, 27 (Bankr.
21 W.D. Tex. 1988); *see also In re Proalert, LLC*, 314 B.R. 436, 444 (9th Cir. BAP 2004).

22 The Debtor believes that it is appropriate to grant the Secured Parties a replacement lien on
23 all assets of the estate, other than avoiding power claims and recoveries, if and to the extent there is
24 any diminution in value of the Secured Parties’ respective interests in cash collateral. In light of
25 the value of the Debtor’s assets, the Debtor does not believe that the Secured Parties will ever be
26 undersecured. In any event, to provide them additional protections, the Debtor requests that the
27 Court’s order authorizing the use of cash collateral grant the Secured Parties such a replacement
28 lien.

1 **B. THE COURT SHOULD SET A FINAL HEARING ON THE DEBTOR'S REQUEST**
2 **FOR AUTHORITY TO USE CASH COLLATERAL THROUGH MARCH 2023**

3 Both the Federal Rules of Bankruptcy Procedure and the Court's Local Bankruptcy Rules
4 contemplate that the initial hearing on a cash collateral motion may be an interim hearing, with the
5 hearing on final approval to be set after parties in interest have additional time to review the request
6 for relief. *See* Fed. R. Bankr. P. 4001(b)(2); LBR 4001-2(b). At the initial hearing, only interim
7 relief typically is afforded because the motion is brought at the beginning of the case and the main
8 goal is to ensure that the debtor can maintain its operations pending a final hearing. Therefore, the
9 Debtor is requesting that, at the initial hearing, the Court grant the relief requested herein on an
10 interim basis.

11 The Debtor requests that the Court set a final hearing on its request for authority to use cash
12 collateral during the week of January 23, 2023, with oppositions (if any) to the Debtor's request to
13 be filed 14 days prior to the hearing. In the meantime, the Debtor intends to continue to refine its
14 projections and hopes file updated projections during the first, or early during the second, week of
15 January. This will provide the Secured Creditors and other parties adequate time to evaluate the
16 relief requested and present written oppositions.

17 At the final hearing, the Debtor will request authority to use cash collateral through March
18 2023. Any request for authority to use cash collateral beyond March 31, 2023, will be the subject
19 of a future motion to be heard prior to the end of March.

20
21 **IV.**

22 **NOTICE GIVEN**

23 The Debtor anticipates that this motion and other first day motions, and notice of the
24 hearings thereon, will be served by overnight mail or other manner authorized or instructed by the
25 Court on the Office of the United States Trustee, the Secured Parties, and creditors appearing on
26 the Debtor's list of 20 largest unsecured creditors. The Debtor requests that the Court determine
27 that no other or further notice of this motion is required.

V.

CONCLUSION

For the foregoing reasons, the Debtor requests that the Court enter an order substantially in the form of the order attached as Exhibit “A” hereto, granting this motion, authorizing the Debtor on an interim basis to use cash collateral on the terms described herein, and setting a hearing on the Debtor’s request for final authority to use cash collateral through March 31, 2023. The Debtor also requests such further relief as the Court deems just and proper.

DATED: December 20, 2022

DANNING, GILL, ISRAEL & KRASNOFF, LLP

By: /s/ Aaron E. de Leest
AARON E. DE LEST
Proposed Attorneys for Better Nutritionals, LLC.
Debtor and Debtor in Possession

EXHIBIT A

1 JOHN N. TEDFORD, IV (State Bar No. 205537)
jtedford@DanningGill.com
2 AARON E. DE LEEST (State Bar No. 216832)
adeleest@DanningGill.com
3 DANNING, GILL, ISRAEL & KRASNOFF, LLP
1901 Avenue of the Stars, Suite 450
4 Los Angeles, California 90067-6006
Telephone: (310) 277-0077
5 Facsimile: (310) 277-5735

6 Proposed Attorneys for Better Nutritionals, LLC,
Debtor and Debtor in Possession

7

8 **UNITED STATES BANKRUPTCY COURT**

9

CENTRAL DISTRICT OF CALIFORNIA

10

RIVERSIDE DIVISION

11

12 In re

Case No. 6:22-bk-xxxxx-xx

13 BETTER NUTRITIONALS, LLC,

Chapter 11

14

Debtor and Debtor in
Possession.

15 **INTERIM ORDER GRANTING
DEBTOR'S MOTION FOR ENTRY OF
ORDER (1) AUTHORIZING USE OF
CASH COLLATERAL ON AN INTERIM
BASIS PENDING A FINAL HEARING,
(2) SCHEDULING A FINAL HEARING
ON THE DEBTOR'S REQUEST FOR
AUTHORITY TO USE CASH
COLLATERAL THROUGH MARCH 31,
2023, AND (3) GRANTING RELATED
RELIEF**

16

17

18

19

20

21

22

Date:

11

Time:

11

Place:

Courtroom 11

3420 Twelfth Street
Riverside, California 92501

23

24

25

26

27

28

1 On December [REDACTED], 2022, the Court heard and considered the *Motion for Entry of Order*
2 (1) *Authorizing Use of Cash Collateral on an Interim Basis Pending a Final Hearing*,
3 (2) *Scheduling a Final Hearing on the Debtor's Request for Authority to Use Cash Collateral*
4 *Through March 31, 2023*, and (3) *Granting Related Relief* (the "Motion") (docket no. [REDACTED]) filed by
5 debtor and debtor in possession Better Nutritionals, LLC (the "Debtor"), the Honorable
6 [REDACTED], United States Bankruptcy Judge, presiding. Appearances were as noted on
7 the record at the hearing.

8 The Court having considered the Motion, the Declaration of Sharon Hoffman (the
9 "Hoffman Declaration") (docket no. [REDACTED]), and other first-day motions filed by the Debtor, having
10 heard the statements of counsel at the hearing, having determined that notice of the Motion and the
11 hearing was adequate and proper, for good cause appearing, it is

12 **ORDERED THAT:**

13 1. The Motion is granted as set forth herein.

14 2. The Debtor is authorized to use cash collateral, as that term is defined in 11 U.S.C.
15 § 363(a) of the Bankruptcy Code, on an interim basis through the close of business on January 27,
16 2023, in accordance with the budget attached as Exhibit "1" to the Hoffman Declaration, subject to
17 a 10% cumulative variance.

18 3. The final hearing shall be held on January __, 2023, at __:_ __.m. If the Debtor
19 wishes to file supplemental papers for the final hearing, such papers shall be filed with the Court on
20 or before January __, 2023. Oppositions to the Debtors' request for authority to use cash collateral
21 through March 31, 2023, shall be in writing and filed with the Court on or before January __, 2023.
22 Replies shall be in writing and filed with the Court on or before January __, 2023.

23 4. Aramark Services, Inc., Suitable Staffing Solutions, and Sharon and Odelya
24 Hoffman (collectively the "Secured Parties") shall be and is hereby granted a replacement lien on
25 all of the estate's assets, excluding avoiding power claims and recoveries, to the extent that the
26 Debtor's use of each such Secured Party's cash collateral results in a decrease in value of such
27 Secured Party's interest in cash collateral.

5. If and to the extent that Federal Rule of Bankruptcy Procedure 6004(h) applies to this order, the 14-day stay provided by that rule is waived.

6. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this order.

#